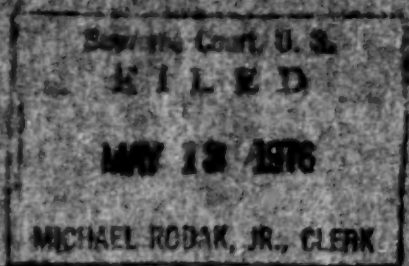


No. 75-1450



**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975**

**IOWA DEPARTMENT OF SOCIAL SERVICES,
STATE OF IOWA,**

Petitioner,

vs.

WEST HEIGHT MANOR, INC.,

Respondent,

**KEVIN BURNS, COMMISSIONER OF STATE OF IOWA
DEPARTMENT OF SOCIAL SERVICES, AND
STATE OF IOWA DEPARTMENT OF SOCIAL
SERVICES,**

Petitioners,

vs.

**HUTCHISON NURSING HOME, INC., NEW HAVEN
REST HOME, INC., GRIFFIN NURSING CENTER,**

Respondents.

**BRIEF OF RESPONDENTS, HUTCHISON NURSING
HOME, INC., NEW HAVEN REST HOME, INC. AND
GRIFFIN NURSING CENTER IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO
THE IOWA SUPREME COURT**

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HUTCHISON NURSING HOME, INC.,
NEW HAVEN REST HOME, INC.,
AND GRIFFIN NURSING CENTER.**

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OPINIONS BELOW

The opinions of the Iowa Supreme Court are correctly identified by Petitioners. They do *not* involve identical issues. Most notably, from a practical standpoint, the Petitioners here *owe* these Respondents whereas the Respondent West Height Manor, Inc. owes the Petitioners. Moreover, as a review of those opinions indicates, the legal questions were substantially different.

JURISDICTION

As will be hereinafter expounded, there is no jurisdiction in this Court except to award damages as suggested by Supreme Court Rule 56(4).

No federal questions were raised by Petitioners, and the only federal questions raised at all, by these Respondents, were not reached because their determination was unnecessary.

The decision of the Supreme Court of Iowa does not draw into question the validity of a treaty or a statute of the United States, does not draw into question the validity of a state statute on any grounds whatsoever, nor is any title, right, privilege or immunity specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under the United States. None of the jurisdictional prerequisites of 28 U.S.C. §1257(3) are present.

QUESTION PRESENTED

The only question that is properly before this Court is whether or not Respondents should have damages pursuant to Court Rule 56(4).

STATEMENT OF THE CASE

Petitioners' statement of the case is notably wanting in meeting the requirements of Rule 23(f) because, in fact, there were no federal questions raised by Petitioners in the courts below, nor were any federal questions decided by those courts. The only federal questions raised were pled by these Respondents in their initial petition (App., p. 1), but those questions were not reached below because their decision was unnecessary for a decision of the case.

The only question decided by the Iowa Supreme Court in these Respondents' case was whether or not Iowa law countenanced the withholding of funds by Petitioners from these Respondents. The Iowa Supreme Court agreed with the trial court in holding that it did not.

ARGUMENT

The petition for Writ of Certiorari is so completely devoid of merit that this Court should resurrect and apply its power to award damages. Petitioners have been withholding funds from these Respondents for over three years. It has now been more than four months since the Supreme Court of Iowa held that Petitioners acted illegally in so doing. Yet the pattern of delay continues. Note that the Petition itself was filed within three days of the expiration of the enlarged time for filing the Petition, which enlargement of time was granted based on a motion filed out of time according to Rule 34(2), and which asserted no reason whatsoever for failure to either file the Petition for the writ or the motion for enlargement of time theretofor.

As early as the 18th day of February, 1976, Petitioners, through their Counsel, in a motion for continuance filed in the Iowa District Court for Polk County, stated that Petitioners were "contemplating filing a Petition for Writ of Certiorari to the United States Supreme Court." (App., p. 2). On February 20, 1976, Petitioners, through their Counsel, represented to the Chief Justice of the Supreme Court of Iowa, in an ex parte Application for Stay presented to that Court, that "the Attorney General has reached a decision to appeal the decision rendered in this Court on the 17th day of December, 1975, to the United States Supreme Court by way of a Petition for Certiorari, and the said attorney's office is in the throes of preparing such

a Petition.” (App., p. 2). Yet the Petition itself was not filed until very nearly two months later. Then Petitioners do not even make a serious attempt to demonstrate that there is a substantial federal question because, of course, there is not.

In this case, the *Hutchison* case, the Iowa Supreme Court did not decide any federal question whatsoever. It was not asked to. The Court found that the state plan for Medicaid payments incorporated by reference the reasonable costs standards applicable to so-called Medicare payments. That no more raises a federal question than had the state plan incorporated by reference reasonable costs standards adopted by the American Institute of Accountants. In fact the standards adopted did not even require any interpretation. They were clear and unambiguous. The fact that they were later changed did not impress the Iowa Supreme Court, and if it had, that Court no doubt would have turned to these Respondents’ contentions that to change rules in the middle of the stream was an impairment of the obligation of contract, and a denial of due process and equal protection. At least three United States District Courts have dealt with Medicare regulations as such and have held the regulation in question to be a Denial of Due Process. *South Windsor Convalescent Inc. v. Mathews*, 403 F. Supp. 515 (1975); *Hazelwood Chronic Convalescent Inc. v. Mathews*, No. 75-6136 (9 CA); *Springdale Convalescent Center v. Mathews*, No. 75-4199, CCH Medicare & Medicaid Guide ¶27,559.

CONCLUSION

The Petition for Writ of Certiorari is frivolous and was interposed for delay. It should be dismissed forthwith, and Respondents should have damages at least equivalent to interest at 10% on the money withheld.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS,

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NEW HAVEN REST HOME, INC.,

AND GRIFFIN NURSING CENTER.

APPENDIX

EXTRACT FROM PLAINTIFFS' PETITION

10. The decision of the Commissioner is illegal and beyond his authority and jurisdiction for each and all of the following reasons:

. . .

. . .

C. The Commissioner has denied plaintiffs Due Process under the Constitutions of Iowa and the United States in that if he had authority to make retroactive adjustments, he failed to give notice of such authority to the plaintiffs.

D. The Commissioner has Impaired the Obligations of Contract in violation of the Constitutions of Iowa and the United States in that the contract for services to Medicaid recipients between the State and the plaintiffs were unilaterally modified by the Commissioner and in so doing the Commissioner has impaired the obligations of contract between the State of Iowa and the Plaintiffs.

E. The Commissioner has denied Equal Protection under the Constitutions of Iowa and the United States by attempting to recover payments only against those Skilled Nursing Homes who terminated the Medicaid program after August 1, 1970.

. . .

MOTION FOR CONTINUANCE

COMES NOW, defendants and pursuant to R.C.P. 183 of the Iowa Rules of Civil Procedure moves the Court to continue the hearing set for February 20, 1976, at 3:00 and as reasons therefor, state:

1. That the undersigned attorney has a previously set hearing in Independence, Iowa, before the District Court which may, if not settled, undoubtedly extend until part or most of the next day February 20;

2. That the office of the Attorney General for the State of Iowa is contemplating filing a petition for Writ of Certiorari to the United States Supreme Court and a final decision on this will be made shortly;

3. That an automatic stay of judgment will be granted as soon as the matters are presented to the Supreme Court of Iowa and the United States Supreme Court.

WHEREFORE, in the interests of justice, the defendant moves the Court to continue the hearing on this matter until the petition for Writ of Certiorari has had a determination by the United States Supreme Court or the Attorney General elects not to file the same in which event the hearing should be set at a future date convenient to the Court and counsel for both parties.

APPLICATION FOR STAY

COMES NOW, Kevin Burns, et al., Appellants, states that the Attorney General has reached a decision to appeal the decision rendered in this Court on the 17th day of December, 1975, to the United States Supreme Court by way of a Petition for Writ of Certiorari and the said attorneys office is in the throes of preparing such a petition.

WHEREFORE, Appellants respectfully pray that the Court grant a stay of execution of its decree pending the appeal to the Supreme Court of the United States.